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Number of Pages (including this page)

Date: 07/25/2006  
To: Commissioner for Patents  
Location: United States Patent and Trademark Office  
Fax No.: (571) 273-8300  
From: Matthew C. Loppnow Registration No. 45,314  
Subject: Serial No. 10/693,248 Docket No. CS22815RL

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**MESSAGE:**

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- ☒ Appeal Brief (15 pages)
- ☒ Transmittal Form
- ☒ Fee Transmittal Form
- ☒ Petition for Extension of Time

**PLEASE GIVE THESE PAPERS TO:**

EXAMINER:  
GROUP ART UNIT:  
SERIAL NO.:  
FILED:  
INVENTOR:

Gelin, J.  
2617  
10/693,248  
10/24/2003  
Gordecki et al.


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<b>TRANSMITTAL FORM</b> (to be used for all correspondence after initial filing)	Application Number	10/693,248
	Filing Date	10/24/2003
	First Named Inventor	Gordecki, Ryszard J.
	Art Unit	2617
	Examiner Name	GELIN, J.
	Attorney Docket Number	CS22815RL
Total Number of Pages in this Submission		18

ENCLOSURES (check all that apply)		
<input checked="" type="checkbox"/> Fee Transmittal Form	<input type="checkbox"/> Assignment Papers (for an Application)	<input type="checkbox"/> After Allowance Communication to Group
<input type="checkbox"/> Fee Attached	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences
<input type="checkbox"/> Amendment/Reply	<input type="checkbox"/> Licensing-Related papers	<input checked="" type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief)
<input type="checkbox"/> After Final	<input type="checkbox"/> Petition	<input type="checkbox"/> Proprietary Information
<input type="checkbox"/> Affidavits/Declaration(s)	<input type="checkbox"/> Petition to Convert to a Provisional Application	<input type="checkbox"/> Status Letter with appropriate copies
<input checked="" type="checkbox"/> Extension of time Request	<input type="checkbox"/> Power of Attorney, Revocation, Change of Correspondence Address	<input type="checkbox"/> Other Enclosure(s) (please identify below)
<input type="checkbox"/> Express Abandonment Request	<input type="checkbox"/> Terminal Disclaimer	<input type="checkbox"/> Response to Restriction Requirement
<input type="checkbox"/> Information Disclosure Statement	<input type="checkbox"/> Request for Refund	<input type="checkbox"/> Associate Power of Attorney
<input type="checkbox"/> Certified Copy of Priority Documents	<input type="checkbox"/> CD, Number of CDs	<input type="checkbox"/> RCE
<input type="checkbox"/> Response to Missing Parts/ Incomplete Application	Remarks	<input type="checkbox"/> Transmittal Form
<input type="checkbox"/> Response to Missing Parts Under 37 CFR 1.52 or 1.53		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT			
Firm or Individual	Matthew C. Loppnow	Registration No.	45,314
Signature			
Date	07/25/2006		

CERTIFICATE OF TRANSMITTAL/MAILING			
I hereby certify that this correspondence is being facsimile transmitted to facsimile number (571) 273-8300 or deposited with the United States Postal Service with sufficient postage thereon, as first-class mail, in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313 on the date listed below:			
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Signature		Date	07/25/2006

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**FEE****TRANSMITTAL**

Patent fees are subject to annual revision

☐ Applicant claims small entity status. See 37 CFR 1.27
TOTAL AMOUNT OF PAYMENT (\$)**1,520.00****Complete If Known**

Application Number	10/693,248
Filing Date	10/24/2003
First Named Inventor	GORDECKI, RYSZARD J.
Examiner Name	GELIN, JEAN ALLAND
Group Art Unit	2617
Attorney Docket No.	CS22815RL

**METHOD OF PAYMENT (check all that apply)****FEE CALCULATION (continued)**
☐ Check ☐ Credit card ☐ Money Order ☐ Other ☐ None
**4. ADDITIONAL FEES**☒ Deposit Account:

Deposit Account Number

502117

Deposit Account Name

Motorola, Inc.

The Director is authorized to: (check all that apply)

☒ Charge fee(s) indicated below☒ Credit any overpayments☒ Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.18 and 1.17
☐ Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.
**FEE CALCULATION****1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fee Paid (\$)
	Large Fee (\$)	Small Entity Fee (\$)	Large Fee (\$)	Small Entity Fee (\$)	Large Fee (\$)	Small Entity Fee (\$)	
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

**2. EXTRA CLAIM FEES**

Each claim over 20 or, for Reissues, each claim over 20 and more than in the original patent  
 Each independent claim over 3 or, for Reissues, each independent claim more than in the original patent  
 Multiple Dependent Claims

Form (1)	Small Entity Fee (\$)
50	25
200	100
360	180

Total Claims:  Extra Claims:  Fee (\$):  Fee Paid (\$):   
 - 20 or HP =  x 50 =   
 HP = Highest number of total claims paid for, if greater than 3

Indep. Claims:  Extra Claims:  Fee (\$):  Fee Paid (\$):   
 - 3 or HP =  x 200 =

**3. APPLICATION SIZE FEE**

If the specification and drawings exceed 100 sheets of paper, the application size fee is \$250 (\$125 for small entity)  
 For each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(e)(1)(G) and 37 CFR 1.16(e).

Total Sheets:  Extra Sheets:  Number of each additional 50 or fraction thereof:  Fee (\$):  Fee Paid (\$):   
 - 100 =  / 50 =  (round up to a whole number) x 250 =

**5. OTHER FEE(S) (specify)**

Non-English Specification, \$130 fee (no small entity discount)

Fee Paid (\$)

**SUBMITTED BY**

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

5	APPLICANT:	GORDECKI	EXAMINER:	Gelin, J.
	SERIAL NO.:	10/693,248	GROUP:	2617
	FILED:	October 24, 2003	CASE NO.:	CS22815RL
10	ENTITLED:	CELLUAR TELEPHONE WITH IMPROVED MECHANICAL DESIGN		

15 Motorola, Inc.  
Intellectual Property Department  
600 North U.S. Highway 45  
Libertyville, IL 60048

**APPEAL BRIEF UNDER 37 C.F.R. § 41.37**

20 MS Appeal Brief - Patents  
Commissioner for Patents  
25 P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In response to the Office Action dated January 30, 2006, Applicant submits the present  
30 Appeal Brief.

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Atty. Docket No. CS22815RL

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# **I. REAL PARTY IN INTEREST**

The real party in interest is, Motorola, Inc.

## **II. RELATED APPEALS AND INTERFERENCES**

There are no related appeals or interferences.

## **III. STATUS OF CLAIMS**

Claims 1, 3-10, and 14-22 are pending. Claims 1, 3-10, and 14-22 are rejected and are the subject of the present appeal.

## **IV. STATUS OF AMENDMENTS**

No amendments were filed subsequent to final rejection.

## **V. SUMMARY OF CLAIMED SUBJECT MATTER**

The inventions are drawn generally to a cellular telephone (100, 700). The cellular telephone can include a lower half (102, 704) that includes a keypad (105) and an upper half (106, 704) coupled the lower half by a hinge (108, 706). The upper half can have a lower part (110, 708) coupled to the hinge, the lower part including a display (116), and a pivoting head (112, 710) coupled to the lower part, the pivoting head including a camera (122, 716) (Fig. 1, 2 and 7, page 3, line 17 - page 4, line 6, and page 11, line 21 - page 12, line 5).

## **VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

1. Whether claims 17-19 are patentable under 35 U.S.C. § 112, second paragraph.
2. Whether claims 1-9, 16, 17, 20, and 22 are patentable under 35 U.S.C. § 102 over Matsumoto (U.S. Patent Pub. No. 2003/0228847).

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## VII. ARGUMENT

### Claim Limitations At Issue

5

In Claim 1, the limitations at issue are italicized below:

1. A cellular telephone comprising:  
a first part having a longitudinal axis substantially in the center of the first part,  
10 *the first part including a display;*  
*a second part coupled to the first part by a pivot mechanism that includes a*  
*pivot axis that makes an angle of less than ninety degrees with the longitudinal axis of the first*  
*part, whereby the second part can be oriented to face different azimuthal angles about the*  
*longitudinal axis of the first part, the second part including a camera; and*  
15 *a third part connected to the first part by a hinge that includes a hinge axis, the*  
*third part including a keypad.*

In Claim 17, the limitations at issue are italicized below:

- 20 17. A flip type portable telephone comprising:  
*a first section including a keypad; and*  
*a flip second section connected to the first section by a hinge, wherein the flip*  
*section comprises:*  
*a first part that is coupled to the hinge, the first part comprising a first*  
25 *display; and*  
*a pivoting head coupled to the first part by a pivot, wherein the pivot*  
*allows the pivoting head to be oriented to face different directions, and wherein the pivoting*  
*head includes a camera.*

30 In Claim 20, the limitations at issue are italicized below:

20. A cellular telephone comprising:  
a first part having a longitudinal axis, the first part including a display; and

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a second part coupled to the first part by a pivot mechanism that includes a pivot axis that makes an angle of less than ninety degrees with the longitudinal axis of the first part, whereby the second part can be oriented to face different azimuthal angles about the longitudinal axis of the first part,

5                   wherein  
the second part comprises a first surface and a second surface;  
the pivot axis is tilted with respect to the longitudinal axis by an angle of  
alpha; and  
the first surface and the second surface are tilted in opposite directions with  
10                   respect to the pivot axis by the angle alpha.

#### Applicants' Argument

The rejection under 35 U.S.C. § 112, second paragraph is improper because the Office  
15                   Action has not provided a proper basis for the rejection.

The Office Action rejected claims 17-19 under 35 U.S.C. § 112, second paragraph. The Office Action alleged "the phrases 'a first section', 'a flip second section', and so on are not consistent with at least claim 1. For instant in claim 1, the Applicant refers to the first section  
20                   as 'the third section'. It appears that the Applicant gives more than one name to a single feature." This rejection is respectfully traversed.

Applicants assert the rejection under 35 U.S.C. § 112, second paragraph is improper because the Office Action has not provided a proper basis for the rejection. In particular, the Office Action alleges claim terms must be consistent between two independent claims, such as  
25                   claim 17 and claim 1. However, there is no basis in the MPEP, the statutes, or case law for such an allegation. Furthermore, one of ordinary skill in the art would clearly understand what is being claimed in claims 17-19. Additionally, Applicant asserts two different independent claims must include at least one different claim term under the doctrine of claim differentiation. Thus, the Office Action has not provided a proper foundation for the rejection  
30                   under 35 U.S.C. § 112, second paragraph. Accordingly, Applicants request withdrawal of the rejection under 35 U.S.C. § 112, second paragraph.



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**The Rejection under 35 U.S.C. § 102**

5 The Office Action rejects, under 35 U.S.C. § 102, claims 1-9, 16, 17, 20, and 22 over Matsumoto (U.S. Patent Pub. No. 2003/0228847). The Office Action also rejects, under 35 U.S.C. § 103, claims 10, 15, 18, 19, and 21 over Wilk (U.S. Patent No. 6,643,124) and Matsumoto. These rejections are respectfully traversed.

10 **The Rejection under 35 U.S.C. § 102 is improper because Matsumoto does not disclose all of the claimed elements in the claimed combination**

15 "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference" (MPEP §2131, citing *Verdegal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)).

**Claim 1**

20 Applicant asserts Matsumoto does not disclose or suggest a first part, a second part coupled to the first part by a pivot mechanism, the second part including a camera, and a third part connected to the first part by a hinge that includes a hinge axis, the third part including a keypad, as recited in independent claim 1.

25 In particular, Matsumoto does not disclose the claimed first part including a display and the third part including a keypad, the third part connected to the claimed first part by a hinge. The Office Action alleges Matsumoto discloses element 11 as a first part, element 10 as a second part, and element 3 as a third part. However, element 3 is not connected to element 11 by a hinge. In particular, element 3 is clearly connected to element 10 by the hinge 9. Thus, Matsumoto does not disclose the claimed third part connected to the first part by a hinge.

30 In the Response to Arguments section, the Advisory Action alleges the first part [of Matsumoto] is connected to the third part at least indirectly. However, Applicant is not claiming an indirect connection of elements. In particular, the claims clearly recite the explicit connection of elements. The Advisory Action appears to believe all the elements were found

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in a different combination and then ignores the connection of elements explicitly recited in the claims. Thus, the Advisory Action is attempting to improperly ignore the clear claim language and the connection of elements in the claims. The Advisory Action then goes on to allege Matsumoto teaches all of the features of the claimed invention such as the hinge and the pivot  
5 mechanism to connect the keypad, the display, and the camera. However, once again, the Advisory Action ignores the claimed interrelation and connection of elements. Therefore, the Office Action and the Advisory action have not provided the claimed combination of elements in a single reference.

The Advisory Action then alleges, "Anyone of ordinary skill in the art can rearrange  
10 the parts disclosed by Matsumoto to arrive at the claimed invention." Applicants disagree with the premise of such an allegation. In particular, the allegation admits Matsumoto does not disclose the claimed invention. In particular, the allegation admits the elements of Matsumoto must be rearranged to obtain the claimed invention. Therefore, the Matsumoto does not disclose the express combination of each and every element of the invention as  
15 claimed.

In fact, despite the fact that the premise of the allegation does not support a rejection under 35 U.S.C. § 102, the allegation is not even proper to support a rejection under 35 U.S.C. § 103. In particular, MPEP § 2143.01(III) expressly states, "The mere fact that references can  
20 be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990)." Furthermore, MPEP § 2143.01(IV) expressly states, "A statement that modifications of the prior art to meet the claimed invention would have been 'well within the ordinary skill of the art' at the time the claimed invention was made' because the references  
25 relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish a *prima facie* case of obviousness without some objective reason to combine the teachings of the references. *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993)."

Thus, the Advisory Action makes allegations that not only do not support a rejection under 35 U.S.C. § 102, they also do not support a rejection under 35 U.S.C. § 103.

30 Therefore, Matsumoto does not disclose or suggest a first part, a second part coupled to the first part by a pivot mechanism, the second part including a camera, and a third part connected to the first part by a hinge that includes a hinge axis, the third part including a keypad, as recited in independent claim 1.

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**Claim 17**

Applicant also asserts Matsumoto does not disclose first section including a keypad  
5 and a flip second section connected to the first section by a hinge, wherein the flip section  
comprises a first part that is coupled to the hinge, the first part comprising a first display and a  
pivoting head coupled to the first part by a pivot, wherein the pivot allows the pivoting head to  
be oriented to face different directions, and wherein the pivoting head includes a camera, as  
recited in independent claim 17.

10 In particular, Matsumoto does not disclose the claimed first part comprising a first  
display and a first section including a keypad, the first section coupled to a hinge. The Office  
Action alleges Matsumoto discloses element 11 as a first part, element 10 as a second part,  
and element 3 as a third part. However, element 11 is not coupled to the hinge 9. In  
particular, element 1 is clearly connected to element 10 and not connected to the hinge 9.

15 Thus, Matsumoto does not disclose the claimed first part comprising a first display and a first  
section including a keypad, the first section coupled to a hinge. Furthermore, Matsumoto does  
not disclose a pivoting head including a camera. In particular, as illustrated in Fig. 4, only the  
display section 11 pivots and the display section 11 does not include the camera 21.

20 The Advisory Action alleges, "Claims 17 and 20 include nothing more than what has  
been disclosed in claim 1. Therefore the rejections are maintained for the same reason."

Applicant disagrees. In particular, the Advisory Action completely ignores the features of "a  
flip second section" that includes a "first part that is coupled to [a] hinge, the first part  
comprising a first display" and "a pivoting head coupled to the first part by a pivot..., wherein  
the pivoting head includes a camera." These features include express labels and structural  
25 interconnections that are not disclosed in Matsumoto, as discussed above. Accordingly, the  
Advisory Action does not make up for the deficiencies of the final Office Action.

Thus, Matsumoto does not disclose first section including a keypad and a flip second  
section connected to the first section by a hinge, wherein the flip section comprises a first part  
that is coupled to the hinge, the first part comprising a first display and a pivoting head  
30 coupled to the first part by a pivot, wherein the pivot allows the pivoting head to be oriented to  
face different directions, and wherein the pivoting head includes a camera, as recited in  
independent claim 17.

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**Claim 20**

Applicant further asserts Matsumoto does not disclose a second part including a first surface and a second surface, a pivot axis tilted with respect to the longitudinal axis by an angle of alpha, and the first surface and the second surface tilted in opposite directions with respect to the pivot axis by the angle alpha, as recited in independent claim 20.

Matsumoto does not disclose all of the features recited in independent claim 20 and such is not asserted by the Office Action. The Office Action only alleges Matsumoto discloses, at paragraphs 30-32, a second part can be oriented to face different azimuthal angles about the longitudinal axis of the first part. However, the Office Action does not even address the claimed features of a first surface and a second surface, a pivot axis tilted with respect to the longitudinal axis by an angle of alpha, and the first surface and the second surface tilted in opposite directions with respect to the pivot axis by the angle alpha. Furthermore, Applicant cannot locate the claimed features in the Matsumoto.

The Advisory Action alleges, "Claims 17 and 20 include nothing more than what has been disclosed in claim 1. Therefore the rejections are maintained for the same reason." Applicant disagrees. In particular, the Advisory Action completely ignores the features of a second part comprising a first surface and a second surface, a pivot axis tilted with respect to the longitudinal axis by an angle of alpha, and a first surface and a second surface tilted in opposite directions with respect to the pivot axis by the angle alpha. Accordingly, the Advisory Action does not make up for the deficiencies of the final Office Action.

Thus, Matsumoto does not disclose all of the features recited in independent claim 20 and such is not even asserted by the Office Action.

Therefore, Applicant respectfully submits that independent claims 1, 17, and 20 define patentable subject matter. The remaining claims depend from the independent claims and therefore also define patentable subject matter. Accordingly, Applicant respectfully requests the withdrawal of the rejection under 35 U.S.C. § 102 and 35 U.S.C. § 103, with instructions for the Examiner to allow the pending claims.

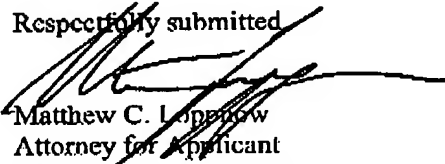
Appl. No. 10/693,248  
Atty. Docket No. CS22815R1.

**CONCLUSION**

In view of the discussion above, the claims of the present application are in condition  
5 for allowance. Kindly withdraw any rejections and objections and allow this application to  
issue as a United States Patent without further delay.

The Commissioner is hereby authorized to deduct the fees for filing a brief in support  
of an appeal and any fees arising as a result of this Appeal Brief or any other communication  
from or to credit any overpayments to Deposit Account No. 50-2117.

Respectfully submitted

  
Matthew C. Loppnow  
Attorney for Applicant  
Registration No. 45,314

Dated: July 25, 2006

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Libertyville, IL 60048

Appl. No. 10/693,248  
Attr. Docket No. CS22815RL

## VIII. CLAIMS APPENDIX

1. A cellular telephone comprising:

a first part having a longitudinal axis substantially in the center of the first part,

5 the first part including a display;

a second part coupled to the first part by a pivot mechanism that includes a pivot axis that makes an angle of less than ninety degrees with the longitudinal axis of the first part, whereby the second part can be oriented to face different azimuthal angles about the longitudinal axis of the first part, the second part including a camera; and

10 a third part connected to the first part by a hinge that includes a hinge axis, the third part including a keypad.

2. (canceled)

15 3. The cellular telephone according to claim 2 wherein:  
the hinge axis is normal to the pivot axis.

4. The cellular telephone according to claim 1 wherein:  
the pivot axis makes an angle of less than 20 degrees with the longitudinal axis.

20

5. The cellular telephone according to claim 4 wherein:  
the pivot axis makes an angle of less than 15 degrees with the longitudinal axis.

6. The cellular telephone according to claim 1 wherein:  
25 the first part comprises a first surface;

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the second part comprises a second surface located adjacent the first surface of  
the first part; and

the pivot mechanism comprises:

a pinion extending from one of the first and second surfaces; and

5 a hole formed in another of the first and second surfaces, wherein the pinion  
extends into the hole.

7. The cellular telephone according to claim 6 further comprising:

a spring seat located in one of the first and second parts, around the hole;

10 a spring retainer attached to the pinion; and

a coil spring located around the pinion between the spring seat and the spring  
retainer.

8. The cellular telephone according to claim 6 further comprising:

15 an annular, axially acting cam disposed on one of the first and second surfaces;

and

an annular, axially engaging follower disposed on another of the first and  
second surfaces, and positioned to engage the axially acting cam.

20 9. The cellular telephone according to claim 8 wherein:

the annular axially acting cam is concentric to the pinion; and

the annular axially engaging follower is concentric to the hole.

10. The cellular telephone according to claim 1 wherein:

25 the second part comprises an second display.

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11-13. (canceled)

14. The cellular telephone according to claim 1 wherein:

5 the second part comprises a camera.

15. The cellular telephone according to claim 14 wherein:

the second part comprises a display, wherein the display and the camera face in  
opposite directions.

10

16. The cellular telephone according to claim 1 further comprising:

a stop mechanism for limiting rotation of the first part relative to the second  
part.

15

17. A flip type portable telephone comprising:

a first section including a keypad; and

a flip second section connected to the first section by a hinge, wherein the flip  
section comprises:

a first part that is coupled to the hinge, the first part comprising a first

20

display; and

a pivoting head coupled to the first part by a pivot, wherein the pivot  
allows the pivoting head to be oriented to face different directions, and wherein the pivoting  
head includes a camera.

25

18. The flip type portable telephone according to claim 17 wherein:



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Atty. Docket No. CS22815RL

the pivoting head comprises a camera and a display that face in opposite directions.

19. The flip type portable telephone according to claim 18 wherein:

5 the pivoting head further comprises an earpiece speaker.

20. A cellular telephone comprising:

a first part having a longitudinal axis, the first part including a display; and

a second part coupled to the first part by a pivot mechanism that includes a

10 pivot axis that makes an angle of less than ninety degrees with the longitudinal axis of the first part, whereby the second part can be oriented to face different azimuthal angles about the longitudinal axis of the first part,

wherein

the second part comprises a first surface and a second surface;

15 the pivot axis is tilted with respect to the longitudinal axis by an angle of alpha;

and

the first surface and the second surface are tilted in opposite directions with respect to the pivot axis by the angle alpha.

20 21. The cellular telephone according to claim 20 wherein:

the first part comprises a third surface and a first display located at the third surface; and

the second part comprises a second display that is disposed at the first surface of the second part.

25

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Atty. Docket No. CS22815R1.

22. The cellular telephone according to claim 20 further comprising:  
a third part coupled to the first part by a hinge, that includes a hinge axis,  
wherein the hinge axis is perpendicular to the longitudinal axis.